IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 373 of 2007

IN

SUMMONS FOR JUDGEMENT NO.62 OF 2007

IN

SUMMARY SUIT NO. 2065 OF 2006

Evergreen Drums & Cans Pvt.Ltd. .. Appellant

versus

Uday Jayantilal Shah .. Respondent

...

Mr.S.U. Pandey for the appellant.

None for the respondent.

CORAM : R.M.S. KHANDEPARKAR

AND D.G.KARNIK, JJ

DATED : 11th June 2007.

P.C.:

1. Heard.

2. Appeal arises from order dated 16th April 2007 passed in Summons for Judgement 62 of 2007 in

Summary Suit no.2065 of 2006. By the impugned order, the learned Single Judge has granted leave to defend the suit subject to deposit of sum of Rs.1,30,000/-.

3. In the application for leave to defend, the defence was sought to be raised on behalf of the appellant that the relevant sales tax forms were not supplied to the defendant inspite of specific clause in that regard in the agreement between the parties and therefore, there is a case for grant of unconditional leave to defend the suit. The impugned order clearly discloses that though there was some substance in the contention that sales tax forms were not supplied in time to the appellant defendant, the fact remains that the appellant had not pointed out specific consignment in respect of which the relevant forms were not issued by the respondent plaintiff to the defendant. Considering the same, the learned Single Judge has granted the conditional leave as stated above, which discloses that the deposit required to be made by the appellant is only relating to a part of the amount claimed as due and payable by the appellant to the respondent.

4. The learned advocate appearing for the appellant candidly admitted that records nowhere

disclose specific consignment in respect of which the relevant forms were not issued by the respondent plaintiff to the appellant. Considering the same, no fault can be found with the impugned order directing the appellant to deposit part of the amount claimed by the respondent plaintiff while granting leave to defend the suit. There being no illegality which would warrant interference in the impugned order, the appeal fails and is rejected. Time to deposit is extended by four weeks. The said deposit being made, written statement should be filed within four weeks therefrom.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)